AAISHAH HEALTHER BONG COLIN v. PENDAFTAR MUALLAF WILAYAH PERSEKUTUAN KUALA LUMPUR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[JUDIAL REVIEW NO: WA-25-111-04-2023]
18 DECEMBER 2023

Abstract – *In determining the application of art. 121(1A) of the Federal Constitution ('FC'), the correct approach to be taken is the 'subject matter approach' and not the 'remedy prayed for approach'. If the ultimate subject matter of an application for leave to commence judicial review falls under the jurisdiction of the Syariah Court, for example, an application for renouncing Islam, then the civil court will be barred from hearing the said application for leave, by virtue of art. 121(1A) of the FC.*

ADMINISTRATIVE LAW: *Judicial review – Leave to commence judicial review – Application for mandamus to compel Registrar of Muallafs ('Registrar') to decide on application of renunciation of Islam – Whether jurisdiction fell on civil court or Syariah Court – Whether correct approach to be taken in determining application of art. 121(1A) of Federal Constitution was 'subject matter approach' or 'remedy prayed for approach' – Whether applicant 'Muslim' as defined under s. 2(1)(d) of Administration of Islamic Law (Federal Territories) Act 1993 – Whether there was legal duty on part of Registrar to decide on application of renunciation of Islam – Whether applicant satisfied test for leave to commence judicial review under O. 53 of Rules of Court 2012*

This was an application by the applicant under O. 53 r. 3 of the Rules of Court 2012 ('ROC') essentially for leave to commence judicial review application, by way of *mandamus*, to challenge omission on the part of the Registrar of Muallafs ('first respondent') to decide on the applicant's application to renounce Islam ('application'). The applicant was born and raised as a Christian, but later converted to Islam and registered as a muallaf by the first respondent. After a few years of being a Muslim, the applicant sought to renounce Islam and revert to Christianity. For this purpose, the applicant had, through her solicitor, issued a letter to the first respondent to apply for her name to be removed from the Register of Muallafs ('Register'). However, after a few months had passed, the first respondent failed to give any decision on the said application. Hence, the present application. During the hearing of the application, the Attorney General's Chambers had raised a preliminary objection based on the following grounds: (i) the ultimate

A subject matter of the application was not amenable to judicial review by virtue of art. 121(1A) of the Federal Constitution ('FC'); and (ii) the prayer for *mandamus* as framed by the applicant was frivolous and vexatious as the first respondent had no legal duty to decide the applicant's application to renounce Islam. Therefore, among the issues that arose in
B determining the application were: (i) whether the jurisdiction to hear the application, which was on the subject matter of renunciation of Islam, fell on this court or the Syariah Court; (ii) whether the Syariah Court has the jurisdiction to hear the application as at the time of this application, the applicant was no longer among 'persons professing the religion of Islam' as
C per s. 2(1)(d) of the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505'); and (iii) whether an order of *mandamus* could be ordered against the first respondent.

Held (dismissing application):

D **(1)** In determining the application of art. 121(1A) of the FC, the approach that ought to be taken was the 'subject matter approach' and not the 'remedy prayed for approach'. Although the prayers in the application were framed to fit the prayers for constitutional and statutory judicial review, the ultimate subject matter of the application was the application to renounce Islam. After applying the 'subject matter approach', the
E application fell within the jurisdiction of the Syariah Court. The Syariah Court hence has the jurisdiction to hear and determine the said application. (paras 12, 15 & 18)

(2) The applicant essentially contended that there was no prior determination by the Syariah Court on the subject matter of the
F application, and as such, the application does not involve reviewing or re-litigating any decision of the Syariah Court and the application was not barred by art. 121(1A) of the FC. However, regardless of whether there was a prior determination or decision by the Syariah Court or otherwise, once the subject matter fell within the jurisdiction of the
G Syariah Court, art. 121(1A) of the FC operates to render the subject matter and the Syariah Court's decision not amenable to judicial review. In the present case, the applicant sought to renounce Islam but did not file a case at the Syariah Court. Since renunciation of Islam fell within the jurisdiction of the Syariah Court, by virtue of art. 121(1A) of the FC,
H this court had no jurisdiction over the application and the same should be heard and determined by the Syariah Court. (paras 47-49)

(3) As a person who had converted to Islam, the applicant fell under the definition of Muslim as per s. 2(1)(d) of the Act 505. Further, as she had been registered in the Register, the applicant shall be treated as a Muslim
I for the purposes of any Federal or State law and for all time. This was

expressly provided by s. 91(1) of Act 505. In addition, the applicant also could not unilaterally on her own accord renounce the religion of Islam whether intrinsically or extrinsically. Therefore, it was clear that the Syariah Court has jurisdiction over the applicant. (paras 51-55)

(4) One of the conditions for an order of *mandamus* to be issued is the existence of a duty imposed by law on the first respondent. In the instant case, considering that the first respondent had no jurisdiction to determine the application, there was no legal duty on the part of the first respondent to decide the application. Hence, there was no omission which could attract the grant of *mandamus*. Further, there was also no single legal provision nor legal precedent which specifically provided or hold that the first respondent has the jurisdiction to hear an application to renounce Islam. Due to that, the applicant's action in framing the application was only a futile attempt to evade the application of art. 121(1A) of the FC. (paras 64 & 67-69)

(5) The test for leave to commence judicial review under O. 53 of the ROC had not been complied with. Not only that the subject matter of the application was not amenable to judicial review, the applicant had also failed to show an arguable case to obtain the order of *certiorari* and *mandamus* at the substantive stage. (paras 70-72 & 74)

Case(s) referred to:

Azizah Shaik Ismail & Anor v. Fatimah Shaik Ismail & Anor [2003] 4 CLJ 281 FC ***(refd)***

Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 SC ***(refd)***

Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal [2014] 4 CLJ 253 FC ***(refd)***

Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2011] 2 CLJ 165 CA ***(refd)***

Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi [2004] 3 CLJ 409 FC ***(refd)***

Karpal Singh Ram Singh v. Ketua Hakim Negara [2011] 1 MLRH 23; [2011] 4 CLJ 179 HC ***(refd)***

Koon Hoi Chow v. Pretam Singh [1972] CLJU 56; [1972] 1 LNS 56 HC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaikh Natar & Ors [2003] 3 CLJ 289 FC ***(refd)***

Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd [2008] 5 CLJ 321 FC ***(refd)***

Peguam Negara Malaysia v. Dr Micheal Jeyakumar Devaraj [2011] 9 CLJ 645 CA ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(refd)***

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 FC ***(refd)***

Syarifah Nooraffyzza Wan Hosen v. Director Of Jabatan Agama Islam Sarawak & Ors [2018] 3 CLJ 620 CA ***(refd)***
Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 CA ***(refd)***
WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd [2012] 4 CLJ 478 FC ***(refd)***

Legislation referred to:
Administration of Islamic Law (Federal Territories) Act 1993, ss. 2(1)(d), (e), 46(2)(b)(x), 85(1), 91(1),
Courts of Judicature Act 1964, s. 25(2), Schedule para 1
Federal Constitution, arts. 11(1), 121(1A), Ninth Schedule State List II item 1
Judges' Code of Ethics 2009, s. 13
Rules of Court 2012, O. 53 rr. 1(2), 3
Specific Relief Act 1950, s. 44(1)

For the applicant - Iqbal Harith Liang; M/s Fahri, Azzat & Co
For the respondents - Mohammad Sallehuddin Md Ali; FC

Reported by Syamim Ariffin

JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

[1] The applicant on 20 April 2023 filed an application that leave be granted to the applicant under O. 53 r. 3 of the Rules of Court 2012 (ROC) to apply for a judicial review (encl. 1).

[2] The applicant seeks the following reliefs:

(i) a declaration that the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) gives an implied jurisdiction to the first respondent to declare that a person is no longer a Muslim;

(ii) a declaration that s. 91 of the Act 505 is unconstitutional because it is inconsistent with art. 11(1) of the Federal Constitution (FC) and alternatively, a declaration that s. 91 of the Act 505 is inconsistent with item 1 of the State List of the FC;

(iii) a declaration that s. 85(1) of the Act 505 is unconstitutional because it is inconsistent with item 1 of the State List of the FC and consequently, a declaration that the definition of Muslim in s. 2(d) of the Act 505 is unconstitutional;

(iv) a declaration that the definition of Muslim in s. 2(e) of Act 505 is unconstitutional because it is inconsistent with item 1 of the State List of the FC;

(v) a declaration that pursuant to art. 11(1) of the FC, the applicant has a right to profess and practice the religion of her choice;

(vi) an order of *mandamus* that the first respondent must consider the applicant's application for her name to be cancelled from the Register of Muallafs, and make a decision immediately; and

(vii) a declaration that the refusal and/or delay of the first respondent to decide the applicant's application in the letters dated 30 January 2023, 20 February 2023 and 17 March 2023 is irrational and unreasonable.

[3] In the application, the applicant essentially seeks leave for judicial review to challenge the alleged omission on the part of the first respondent to decide on her application to renounce Islam.

[4] After the hearing, I dismissed the applicant's application in encl. 1 and will now set out the grounds for my judgment.

Background Facts

[5] The background facts of this case are largely undisputed and can be summarised as follows:

(i) the applicant was born on 9 July 1997 to Christian parents and was baptised by her parents on 28 January 1998;

(ii) the applicant was raised as a Christian by her parents and was confirmed as a Christian on 6 September 2013 when she was 16 years old;

(iii) on 18 August 2017, the applicant converted to Islam and was registered as a Muallaf by the first respondent;

(iv) on 27 January 2022, the applicant affirmed a statutory declaration where she stated that she wanted to renounce Islam and revert to Christianity;

(v) on 30 January 2023, the applicant through her solicitor, issued a letter to the first respondent to apply for her name to be cancelled from the Register of Muallafs;

(vi) on 20 February 2023, the applicant through her solicitor issued a letter to the first respondent to obtain the latest status of her application;

(vii) on 17 March 2023, the applicant through her solicitor issued a letter to the first respondent to demand that the first respondent decide her application within seven days from the date of the letter; and

(viii) as of the date of filing of the application, the first respondent has not given any decision on her application.

The Law

[6] The Federal Court in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [2012] 4 CLJ 478; [2012] 4 MLRA 257; [2012] 4 MLJ 296 at 303, speaking through Suriyadi Halim Omar FCJ (as he then was) held:

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> ... Leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though *ie*, unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.

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[7] The test laid down for leave to commence a judicial review in *WRP Asia Pacific Sdn Bhd* (*supra*) are as follows:

(i) whether the subject matter is amenable to judicial review; and if so

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(ii) from the materials available, whether the application is frivolous and if not thought as frivolous, consider that the applicant has an arguable case to obtain the relief sought at the substantive hearing.

[8] The principles governing applications for leave to commence judicial review proceedings have also been set out in *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2006] 1 CLJ 927; [2006] 1 MLRH 507; [2006] 5 MLJ 60 at 69 where Gopal Sri Ram JCA (as he then was) held:

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> [10] the High Court should not go into the merits of the case at the leave stage. Its role is only to see if the application for leave is frivolous ... So too will the court be entitled to refuse leave if it is a case where the subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable.

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[9] It is trite that the applicant will have to satisfy the tests propounded in the abovementioned cases in order to secure the leave to commence the judicial review proceedings. At this stage, the court need not go into the merits of the case, but only to see if the subject matter is amenable to judicial review or whether the application for leave is frivolous.

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Preliminary Objections (PO)

[10] During the hearing of the application, the learned Federal Counsel from the Attorney General's Chambers (AGC) was present and raised a PO. The PO was premised on the following grounds:

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(i) the ultimate subject matter of the application is not amenable to judicial review by virtue of art. 121(1A) of the FC; and

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(ii) the applicant's prayer for *mandamus* as framed by the applicant is frivolous and vexatious as the first respondent has no legal duty to decide the applicant's application to convert out of Islam.

The Decision Of The Court

I

The Subject Matter Is Not Amenable To Judicial Review

[11] The applicant essentially contends that based on the prayers framed in the application, the subject matter of the application is that of constitutional

judicial review and statutory judicial review which falls within the jurisdiction of this Honourable Court. Therefore, this application is not barred by art. 121(1A) of the FC.

[12] This court is of the view in determining the application of art. 121(1A) of the FC, the approach that should be taken is the 'subject matter approach' and not the 'remedy prayed for' approach.

[13] I find support for my view by referring to the Federal Court case of *Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaikh Natar & Ors* [2003] 3 CLJ 289; [2003] 1 MLRA 283; [2003] 3 MLJ 705; [2003] 4 AMR 501, where it was held as follows:

> [16] In Abdul Shaik bin Md Ibrahim, Abdul Hamid Mohamed J held that *the case is not removed from the jurisdiction of the Syariah court merely because the plaintiffs have prayed for the remedy of declarations. His Lordship did not follow Isa Abdul Rahman but followed Soon Singh which adopted the 'subject matter' approach rather than the 'remedy prayed for' approach ...*
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> [21] We respectfully agree with Abdul Hamid Mohamad J that *Isa Abdul Rahman cannot be supported.*
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> [27] With respect, *the Court of Appeal, in our view, fell into the same error as the learned judge in taking 'the remedy prayed for' approach instead of the 'subject matter approach' ...* (emphasis added)

[14] Further, in *Azizah Shaik Ismail & Anor v. Fatimah Shaik Ismail & Anor* [2003] 4 CLJ 281; [2004] 2 MLJ 529; [2003] 1 MLRA 570; [2002] 4 AMR 4437, the Federal Court held:

> [5] This appeal has again raised the question of jurisdiction of the Syariah Court and the High Court. *If the Syariah Court has jurisdiction over the matter, the High Court does not have jurisdiction over it – art. 121(1A) of the Federal Constitution. That calls for the determination of the approach that the court should take in determining the jurisdiction of the Syariah Court.*
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> [6] This court has very recently decided on this point in *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaikh Natar & Ors* [2003] 1 MLRA 283; [2003] 3 MLJ 705; [2003] 3 CLJ 289; [2003] 4 AMR 501. In that case, the subject matter was the adjudication and administration of the will of a deceased Muslim, even though the respondents (plaintiffs in the High Court) had prayed for remedies of a declaration that the land in question be surrendered to the estate of Shaik Eusoff bin Shaik Latiff, deceased, a declaration that the land in question be vested upon the respondents as executors of the deceased's estate and for an account and, in the alternative, the respondents prayed for damages and an injunction.

A [7] Haidar CJ (Malaya) (delivering the judgment of the court) surveyed the earlier judgments of this court, the Supreme Court as well of the High Court and concluded:

We respectfully agree with Abdul Hamid Mohamad J that Isa Abdul Rahman cannot be supported.

B [8] It should be noted that 'Isa Abdul Rahman' is the case of *Majlis Agama Islam Pulau Pinang lwn. Isa Abdul Rahman dan satu yang lain* [1992] 1 MLRA 240; [1992] 2 MLJ 244; [1992] 1 CLJ (Rep) 2010. In that case, even though the land and mosque in issue were a 'wakaf am', the Supreme Court held that since the real order asked for by the respondents was a perpetual injunction to restrain the C appellant or its agents from demolishing the said mosque and to restrain the appellant from taking any preliminary steps to demolish the mosque and erect a commercial building on the site and since the Syariah Courts did not have jurisdiction to issue an injunction, therefore the High Court had jurisdiction over the suit. This D approach is what has become known as 'the remedy approach'. Secondly, the decision of Abdul Hamid Mohamad J (as he then was) referred to in the judgment of Haidar CJ (Malaya) refers to the case of *Abdul Shaik bin Md Ibrahim & Anor v. Hussien bin Ibrahim & Ors* [1999] 5 MLJ 618 (HC) which adopted the 'subject matter' approach.

E [9] Therefore, *this court has put to rest that the subject matter approach should be adopted.*

[10] In this case, *there is not doubt that the subject matter of the case is the custody of the child. That clearly falls within the jurisdiction of the Syariah Court.* Even learned counsel for the appellants did not dispute that. *His* F *argument was that since the Syariah Court had no jurisdiction to issue the writ of habeas corpus, the civil court had the jurisdiction to issue the same in this case. The short answer to that argument is that habeas corpus is the remedy sought and not the subject matter of the case.*

[11] *Since the subject matter in question is the custody of the child and since that* G *is clearly within the jurisdiction of the Syariah Court, by virtue of the provisions of art 121(1A) of the Federal Constitution, the High Court has no jurisdiction over the matter.* (emphasis added)

[15] Coming back to the facts in the present case, I am of the view that even though the prayers in the application are framed to fit the prayers for H constitutional and statutory judicial review, the ultimate subject matter of the application is the applicant's application to convert out of Islam *ie*, renunciation of Islam.

[16] In the present case, the subject matter of the application is the applicant's application to renounce Islam. This is evident based on the I following:

(i) the applicant converted to Islam on 18 August 2017 and was registered as a Muallaf by the first respondent; and

(ii) the applicant affirmed the statutory declaration on 27 January 2022 to renounce Islam and revert to Christianity.

[17] However, the applicant did not file any application in the Syariah Court to renounce Islam. Instead, the applicant wrote to the first respondent to cancel her name from the Register of Muallafs.

[18] Therefore, applying the 'subject matter approach' as mentioned in the above authorities, I am of the considered view that the applicant's application to renounce Islam falls within the jurisdiction of the Syariah Court. The Syariah Court has the jurisdiction to hear and determine the applicant's application to renounce Islam. Therefore, the ultimate subject matter of the application is not amenable to judicial review by virtue of art. 121(1A) of the FC.

[19] Article 121(1A) of the FC clearly provides that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. It states as follows:

> **Judicial power of the Federation**
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> 121(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:
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> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
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> (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
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> (c) (Repealed),
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> and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.
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> (1A) *The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.* (emphasis added)

[20] There have been many cases concerning art. 121(1A) of the FC decided by the courts in the last decades. The law remains that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[21] The following cases would show that matters concerning Islamic matters, which include renunciation of Islam would fall under the jurisdiction of the Syariah Court by virtue of art. 121(1A) of the FC.

[22] In *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 SC; [1992] 1 MLJ 1; [1991] 1 MLRA 301, the appellant sought a declaration that her deceased son at the time of his death was not a Muslim and/or had renounced the Islamic faith and for the consequential declaration that she was entitled to the body of the deceased. Mohamed Yusof SCJ (as he then was) in his judgment mentioned as follows:

> *The foremost question to be determined is whether the deceased had renounced Islam during his lifetime and the only forum qualified to answer the question is the syariah court.* It would not be feasible to direct the judicial commissioner to refer the matter to the chairman of the fatwa committee under s. 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned judicial commissioner, for a ruling by the committee under s. 37(4). *This is a matter which is within the jurisdiction of the syariah court and not the High Court.* Further, s. 37(4) has been overtaken and superseded by the constitutional amendment in art. 121(1A) of the Federal Constitution. (emphasis added)

[23] Further, in *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5; [1999] 1 MLRA 115; [1999] 1 MLJ 489, the appellant in this case was brought up as a Sikh but had converted to Islam without the knowledge and consent of his mother when he was still a minor. He then upon reaching 21 years of age, went through a baptism ceremony into the Sikh faith, thereby renouncing Islam. Subsequently, he filed an originating summons seeking a declaration that he was no longer a Muslim.

[24] The Federal Court also held that in cases of conversion out of Islam, the jurisdiction lies in the Syariah Court. Mohd Dzaiddin FCJ (as he then was) held that:

> *The jurisdiction of the syariah courts to deal with conversions out of Islam, although not expressly provided for in some State Enactments, can be read into those enactments by implication derived from the provisions concerning conversion into Islam. It is inevitable that since matters on conversion to Islam come under the jurisdiction of the syariah courts, by implication, conversion out of Islam should also fall under the jurisdiction of the same courts. Thus, the appellant's application for a declaration that he was no longer a Muslim came within the jurisdiction of the syariah court and not that of the High Court* (see pp. 502A, G and 503B); *Lim Chan Seng v. Pengarah Jabatan Agama Islam Pulau Pinang* [1996] 3 CLJ 231 not followed.
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> ...
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> It cannot be disputed that the Syariah court derives its jurisdiction under a State law enacted pursuant to art. 74(2) of the Constitution following para. 1, State List of the Ninth Schedule of the Constitution and in the case of the Federal Territories by virtue of item 6(e) Federal List. Thus, on a matter relating to conversion to Islam, all State Enactments and the

Act expressly vest the Syariah Court jurisdiction to deal with the matter. See, for example, ss. 139, 140, 141 of the Kedah Enactment; Part IX (ss. 85-95) of the Administration of Islamic Law (Federal Territories) Act 1993; and Part VIII (ss. 77-89) the Penang Administration of Muslim Law Enactment 1993. The sections referred to deal with capacity, requirements of a valid conversion, registration, certificate of conversion and recognition of a convert as a Muslim. It is interesting to note that s. 87 of the Federal Territories Act provides that from the moment of his conversion, a convert becomes subject to the same duties and obligation as any other Muslim.

...

One reason we can think of is that the determination of a Muslim convert's conversion out of Islam involves inquiring into the validity of his purported renunciation of Islam under Islamic law in accordance with Hukum Syarak (*Dalip Kaur*). *As in the case of conversion to Islam, certain requirements must be complied with under Hukum Syarak for a conversion out of Islam to be valid, which only the Syariah courts are the experts and appropriate to adjudicate. In short, it does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts.*

(emphasis added)

[25] In *Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi* [2004] 3 CLJ 409; [2004] 1 MLRA 528; [2004] 4 AMR 529; [2005] 1 MLJ 197, the appellants made a statutory declaration declaring that they no longer embraced the religion of Islam in August 1998. They were sentenced to imprisonment on 5 October 2000 for failure to abide by the order of the Syariah Court of Appeal relating to the offence under Undang-Undang Majlis Agama Islam and Adat Istiadat Melayu Kelantan which they had committed before August 1998.

[26] The issue before the court was whether the appellants must be Muslims when they were sentenced in October 2000. Ahmad Fairuz CJ (as he then was) held that:

The appellants were not automatically excused from the charge in the Syariah Court just because they had made the statutory declaration declaring they were no longer embracing the religion of Islam.

The court at para. 6 stated as follows:

Di Mahkamah Tinggi Kota Bharu, *permohonan perayu-perayu untuk pengisytiharan telah ditolak. Mahkamah Tinggi berpendapat bahawa, antara lainnya, perayu-perayu belum disahkan murtad mengikut prosedur yang ditetapkan oleh Enakmen Majlis Agama Islam dan Adat Istiadat Melayu Kelantan 1994 ('Enakmen 1994') dan kerana itu perayu-perayu masih beragama Islam.* Justeru itu, perayu-perayu adalah mengikut per 121(1A) Perlembagaan Persekutuan yang berbunyi:

A The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

tertakluk kepada bidang kuasa Mahkamah Syariah dan kerana itu Mahkamah Tinggi tidak mempunyai bidang kuasa untuk memutuskan permohonan tersebut.
(emphasis added)

B **[27]** More importantly, in *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 3 CLJ 557; [2007] 4 MLJ 585; [2007] 3 AMR 693; [2007] 1 MLRA 359, the Federal Court have also held that the civil court has no jurisdiction in matters pertaining to Syariah matters. The appellant in this case was born and brought up as a Muslim. She applied to C the National Registration Department (NRD) for a change in her name to Lina Joy and to have the word "Islam" be removed from her identity card (IC). Her application was rejected on the ground that it was incomplete without the order of the Syariah Court.

D **[28]** The issue before this court was whether the NRD was entitled in law to impose as a requirement for deleting the entry of Islam in the appellant's IC that she must produce a certificate or a declaration or an order from the Syariah Court that she had apostatised. The Federal Court by majority held that:

E (6) *There was no final decision that the appellant had no longer professed Islam.* Thus, the statement that the appellant could no longer be under the jurisdiction of the Syariah Court because the Syariah Court had only jurisdiction on persons professing Islam should not be emphasised accordingly. *The way a person renounced from a religion should be in accordance of the regulation or law or practice determined or stipulated by the religion itself.* The appellant was not prevented from F marrying. The freedom of religion under art. 11 of the Federal Constitution required that the appellant complied with the rituals or law of the Islamic religion specifically regarding renunciation of the religion. *Once the decision of the religion of Islam had been complied and the religious Islamic authority admit her apostasy then only could the appellant profess Christianity* (see para 14).

G (7) *The case of Soon Singh clearly showed that the apostasy matter was within the jurisdiction of the Syariah Court.* Item 1, Second List, Ninth Schedule of the Federal Constitution showed that the Islamic law was on of the matters that was in item 1 and when read together with the case of *Dalip Kaur* thus *it was obvious that the apostasy matter* H *was a matter relating to Islamic law and it was clear that it was within the jurisdiction of the Syariah Court and due to art 11 of the Federal Constitution the civil courts could not interfere in this matter* (see para 16).

(8) It was clear that in art. 11 there was usage of the words '... right to profess and practice his religion ...' The words 'has the right' was I applicable to 'profess' and also 'practise': *Kamariah bte Ali lwn. Kerajaan Negeri Kelantan, Malaysia* [2002] 3 MLJ 657; *Che Omar bin*

> *Che Soh v. Public Prosecutor* [1988] 2 MLJ 55 followed. Islam is not only a collection of dogma and rituals but it is also a complete way of life comprising of all kinds of human, individual or public, legal, political, economic, social, cultural or judicial activities. And when reading arts. 11(1), 74(2) and item 1 in second list of the Ninth Schedule of the Federal Constitution it was obvious that Islam among others included of Islamic law. *Hence, if a Muslim intends to renounce from Islam, he is actually exercising his rights in the syariah law context which has it own jurisprudence relating to apostasy.* The conduct of the NRD officer was only to determine that the appellant was no longer Islam as specified in Islam. Hence, such act could not be said to be contrary to art. 11(1) which itself provides the requirement to comply with the conditions of the religion before she had renounce Islam (see para 17.2). (emphasis added)

[29] In *Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2011] 2 CLJ 165; [2010] 3 MLRA 355; [2012] 3 MLJ 694, the appellant in this case is a valid wife of the deceased sought a declaration that the deceased was a Hindu, following the custom and Hindu religion before his death. The appellant also contended that as the deceased was not a Muslim on the date of his death, all the documents of conversion of the deceased to the Islamic religion were void. The issue before this court was whether the learned High Court Judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the order of the Syariah High Court.

[30] The appellant contended, *inter alia*, as follows (i) that by making the orders as he did, the learned judge had abrogated the powers of the civil court to the Syariah Court, (ii) that it was not established that the Syariah High Court had jurisdiction in this case because it was not known whether the deceased in this case was a Muslim or not in the first place; and (iii) that the first respondent was not a legal person and its appearance before the Syariah High Court was a nullity.

[31] Abdul Wahab Patail JCA (as he then was) held that:

> [9] In our view when giving effect to art. 121(1A) the High Court should first decide whether it has jurisdiction *ie*, whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court whether by state or federal law.
>
> [10] Once the civil High Court determines and decides that the matter is within the jurisdiction of the Syariah Court, the civil High Court should then decline to adjudicate further on the matter.
>
> [11] This was clearly the approach taken by the learned High Court judge in this case. After setting out the case for the appellant extensively and citing several authorities the learned judge concluded:

A … 18. Di Wilayah Persekutuan terdapat peruntukan yang nyata dalam Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) mengenai isu pemelukan agama Islam. Bahagian IX Akta 505 menghuraikan dengan jelas prosedur pemelukan Islam. Oleh itu, sudah tentu mahkamah yang mempunyai bidang kuasa dan kompeten untuk menentukan apa-
B apa perkara yang timbul di dalam Akta 505, seperti kesahan pemelukan seseorang itu ke agama Islam adalah Mahkamah Syariah dan bukan Mahkamah Sivil. Ini adalah selari dengan perkara 121(1A) Perlembagaan Persekutuan yang memperuntukkan bahawa Mahkamah Sivil tidak mempunyai bidang kuasa berkenaan dengan apa-apa perkara di mana Mahkamah Syariah mempunyai
C bidang kuasa yang diberikan di bawah undang-undang bertulis.

19. Saya juga berpendapat bahawa *walaupun pemohon melalui affidavit-afidavit yang difailkan cuba menunjukkan bahawa si mati dalam tempoh yang dikatakan si mati telah memeluk agama Islam, telah mengambil bahagian dalam upacara keagamaan Hindu, dan melakukan*
D *perkara yang bertentangan dengan agama Islam atau tidak melakukan perkara seperti yang sepatutnya dilakukan oleh orang Islam, tetapi perkara-perkara tersebut adalah persoalan mengenai undang-undang Islam. Sekali lagi bidang kuasa untuk menentukan perkara-perkara seperti itu adalah Mahkamah Syariah dan bukan Mahkamah Sivil.*

E It certainly cannot be said, as the appellant has tried to say, that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court. (emphasis added)

F **[32]** In *Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal* [2014] 4 CLJ 253; [2014] 3 MLRA 173; [2014] 3 MLJ 757, the respondent's ('the plaintiff') father had converted to Islam together with his wife and five children, including the plaintiff, who was then one year and three months old in 1983. The statutory declaration was affirmed by her parents and the conversion was registered with Majlis Agama Islam dan Adat
G Resam Melayu Pahang. A certificate of conversion was subsequently issued to plaintiff's parents, but the plaintiff and her siblings' certificates were never issued until 1989.

[33] In 2009, the plaintiff commenced an action against the defendants in the High Court, *inter alia*, for the declarations and orders that the defendants
H had wrongfully and unlawfully subjected the plaintiff to undergo a religious conversion process at the age of seven years old; the Sijil Akuan Masuk Islam dated 28 December 1989 executed by the plaintiff was ineffective, null and void *ab initio*; and that the Director General of the National Registration Department is ordered and directed to immediately take all the necessary
I actions to rectify its record about the plaintiff, by reinstating the plaintiff's original Indian name in the plaintiff's identity card and to delete the word 'Islam'.

[34] Her application was struck out at the High Court but was allowed at the Court of Appeal. The Court of Appeal, in allowing plaintiff's appeal, ordered the plaintiff's originating summons be converted to a writ and directed the matter be reverted to the High Court to be tried.

[35] The issues that arose for the court's determination in this appeal were whether the civil or Syariah Court had the jurisdiction to determine whether a person professed Islam or not; and what were the matters that fall within the jurisdiction of the Syariah Court. Arifin Zakaria CJ (as he then was) held that:

> Article 121 of the Federal Constitution ('the Constitution') clearly provided that the civil court shall have no jurisdiction on any matter falling within the jurisdiction of the Shariah Court. The matters that fall within the jurisdiction of the Shariah Court were as provided under art. 74 of the Constitution, *inter alia*, matters falling within the State List in the Ninth Schedule which were Islamic law, personal and family law of person professing the religion of Islam. *Whether a person was a Muslim or not was a matter falling under the exclusive jurisdiction of the Shariah Court. It would be highly inappropriate for the civil court, which lacks jurisdiction pursuant to art. 121, to determine the validity of the conversion of any person to the religion of Islam as this is strictly a religious issue. Therefore, the question of the plaintiff's conversion in 1983 fell within the exclusive jurisdiction of the Shariah Court* (see paras 16-18, 27 & 30). (emphasis added)

[36] In *Syarifah Nooraffyzza Wan Hosen v. Director Of Jabatan Agama Islam Sarawak & Ors* [2018] 3 CLJ 620; [2017] 6 MLRA 345; [2017] 2 SSLR 387; [2018] 2 MLJ 354, the appellant had left the religion of Islam and embraced Christianity. She afterward went to the National Registration Department (NRD) to apply for a change of her name in her NRIC but NRD informed her that she had to first obtain the letter of release from Islam from the first respondent. The appellant later went to the first respondent's office and met one Ustazah Hanisah who informed her that she had to go to the Syariah Court and attend counseling sessions as an adherence procedure to renounce Islam, but the said sessions never materialised.

[37] The appellant afterward applied for leave to move judicial review against the respondents for the following reliefs: (i) a declaration that she was a Christian; (ii) an order of *mandamus* to compel the first and/or second respondents to issue the said letter; and (iii) an order of *mandamus* to compel the third respondent to change the appellant's name from Syarifah Nooraffyzza binti Wan Hosen to Vanessa Elizabeth. The learned trial judge dismissed the appellant's application. The issue before this appeal was whether the Sarawak Syariah High Court has jurisdiction to deal with the question of apostasy.

[38] The Court of Appeal speaking through Zawawi Salleh JCA (as he then was) held that:

> *Shariah Courts and civil courts formed two separate legal system. The interpretation that reflected the state of the law today was that the Shariah Court and not the civil court had the exclusive jurisdiction to deal with the issue of conversion out of Islam. In addition, our apex court had consistently and repeatedly held that jurisdiction of the Shariah Court regarding apostasy need not be expressly laid out in the state laws.* The court was satisfied that the learned trial judge did not erred in law in holding that the High Court had no jurisdiction to hear apostasy matters (see paras 25, 31,36-37 & 39).
>
> ...
>
> In our view, *the interpretation that reflects the state of the law today is that the Syariah Court and not the civil court has the jurisdiction to deal with the issue of conversion out of Islam.* The constitutional and jurisdictional issues as to whether the Syariah Court has jurisdiction to deal with the questions of apostasy was clarified by Mohamad Dzaiddin FCJ (as he then was) in the case of *Soon Singh a/l Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 wherein His Lordship said:
>
> ...
>
> > *it does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts.*
>
> The court at paragraph 39 concluded that:
>
> > *For the foregoing reasons, we agree with the conclusion of the learned judge that the appellant's application for leave to move for judicial review against the respondents ought to be dismissed as the matter is within the exclusive jurisdiction of Syariah Court and not the Civil High Court.*
>
> (emphasis added)

[39] The Federal Court in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301; [2021] 2 MLRA 70; [2021] 2 MLJ 181 have also held that in a matter concerning renunciation of Islam, the jurisdiction lies in the Syariah court. In this case, the High Court found that the appellant's mother and her putative father were married, and that the appellant was a child of the marriage. The High Court also found that the validity of their marriage fell within the jurisdiction of the Syariah Court and consequently, the question of whether the appellant was no longer a Muslim also fell within the Syariah Court's jurisdiction.

[40] The Court of Appeal dismissed the appellant's appeal and held that the appellant is a Muslim and the effect of the declaration sought by the appellant was to enable her to renounce Islam as her religion that in effect amounted to a declaration that the appellant is no longer a Muslim. The Court of Appeal went on to hold that the jurisdiction is thus vested with the Syariah Court and not the civil court. The Court of Appeal held that according to

cl. (1A) of art. 121 of the FC, the appellant's avenue for the declaration sought was within the jurisdiction of the Syariah Court and not the civil court.

[41] The issue in this case is where the subject matter of a cause or matter requires a determination of 'whether a person is or is not a Muslim under the law' rather than 'whether a person is no longer a Muslim', whether the High Court has the exclusive jurisdiction to hear and determine the said subject matter on a proper interpretation of art. 121 and item 1 of the State List of the Federal Constitution.

[42] Tengku Maimun CJ held that:

> The civil courts had the jurisdiction to determine the status of persons who claimed they 'were never Muslims' as opposed to 'no longer Muslims'. In the former, the question was whether a person was, in the first place, one who professed the religion of Islam; it was a question regarding one's identity under the Federal Constitution which, in turn, necessitated constitutional interpretation and therefore the civil courts were empowered, indeed duty- bound, to adjudicate the matter even if there were religious connotations attached to it. *But when it concerned a case seeking renunciation from the religion of Islam, the matter was exclusively within the jurisdiction of the Syariah Courts by virtue of art. 121(1A) of the Federal Constitution (see paras 99, 106 & 108).* (emphasis added)

[43] It is trite that by virtue of art. 121(1A) of the FC, civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[44] Back to the crux issue of this present case, the applicant, being a Muslim, is seeking to renounce her faith from the religion of Islam to Christianity. Therefore, it is my view that it is the Syariah Court that can give her the order for her application to renounce Islam. She will have to go to the Syariah Court to get the order as provided by the law. This is also supported by the decision of nothing less than the Federal Court and other cases cited above that Syariah Courts will have jurisdiction over cases involving renunciation of Islam.

[45] The civil court in this case has no jurisdiction to determine and to decide on the applicant's application to renounce Islam as it falls within the jurisdiction of the Syariah Courts.

[46] The Syariah Courts have the power to hear the applicant's case under s. 46(2)(b)(x) of the Act 505 which provides:

> (2) A Syariah High Court shall:
>
> (b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to:

A ...

(x) other matters in respect of which jurisdiction is conferred by any written law.

[47] Interestingly, the applicant essentially contends that there is no prior determination by the Syariah Court on the subject matter of the application and as such, the application does not involve reviewing or re-litigating any decision of the Syariah Court and the application is not barred by art. 121(1A) of the FC.

[48] However, this court is of the view that regardless of whether there is a prior determination or decision by the Syariah Court or otherwise, once the subject matter falls within the jurisdiction of the Syariah Court, art. 121(1A) of the FC operates to render the subject matter and the Syariah Court's decision not amenable to judicial review.

[49] In the present case, the applicant seeks to renounce Islam but does not file a case at the Syariah Court. It is my view that since renunciation of Islam falls within the jurisdiction of the Syariah Court, by virtue of art. 121(1A) of the FC, this Honourable Court has no jurisdiction over the applicant's application to renounce Islam and the said application should be heard and determined by the Syariah Court.

"Professing The Religion Of Islam"

[50] The applicant essentially contends that the Syariah Court has no jurisdiction over the applicant because the applicant is no longer a person who professes Islam at present and as such, is not a "persons professing the religion of Islam" as provided in Item 1 of the State List of the FC.

[51] It is to be noted that as a person who has converted to Islam, the applicant falls under the definition of Muslim under s. 2(1)(d) of the Act 505 which provides as follows:

2(1) In this Act, unless the context otherwise requires:

"Muslim" means:

(d) **a person who has converted to Islam in accordance with the requirements of section 85;** (emphasis added)

[52] Further, as a person who has converted to Islam and has been registered in the Register of Muallafs, the applicant shall be treated as a Muslim for the purposes of any Federal or State law and for all time. This is expressly provided by s. 91(1) of the Act 505 as follows:

91(1) *A person who has converted to Islam and has been registered in the Register of Muallafs shall, for the purposes of any Federal or State law, and for all time, be treated as a Muslim.* (emphasis added)

[53] In *Rosliza Ibrahim* (*supra*), it was held by the Federal Court that:

> [83] Article 11(1) of the FC guarantees the right to profess and practice one's religion. The conjunction "and" in art. 11(1) suggests that it governs more than mere professing. It extends to how one identifies oneself or how one may be identified with a specific religion and the right to also determine one's own level of devotion to his or her belief. *However, item 1 of the State List singularly uses the word "professing". Contrasting art. 11(1) with item 1 of the State List, it is plain that the latter was deliberately more narrowly worded to exclude the requirement of "practice". Thus, so long as one is a Muslim by identification whether he practises or not, or whether he continues to believe in the faith or not, he is no less legally identified as a "person professing the religion of Islam."* (emphasis added)

[54] Added to that, the applicant cannot unilaterally on her own accord renounce the religion of Islam whether intrinsically or extrinsically. The Federal Court in *Rosliza Ibrahim* (*supra*) held as follows:

> [87] *Administratively, once one becomes a Muslim, and becomes subject to the jurisdiction of the Syariah Courts, the procedure to "leave" the religion also becomes subject to Islamic law …*
>
> [88] *Summarising the above, one cannot unilaterally on his own accord renounce the religion of Islam. Doing so would amount to an offence against the precepts of Islam. In such an instance, the Syariah Court would have both jurisdictions ratione personae and ratione materiae …* (emphasis added)

[55] Therefore, it is clear that the Syariah Court has jurisdiction over the applicant and the applicant's contention is clearly devoid of merit.

Mandamus

[56] The applicant framed the application as a challenge against the alleged omission on the part of the first respondent to decide the applicant's application to renounce Islam. In essence:

(i) the applicant contends that the first respondent has the implied jurisdiction to hear an application to renounce Islam;

(ii) the applicant contends that the first respondent's refusal and/or delay in deciding the applicant's application to renounce Islam amounts to an omission; and

(iii) the applicant seeks to obtain *mandamus* as a relief for the alleged omission on the part of the first respondent.

[57] It is to be noted that the court's jurisdiction to grant an order of *mandamus* is based on s. 25(2) of the Courts of Judicature Act 1964 (CJA), para. 1 of the Schedule to the CJA and s. 44(1) of the Specific Relief Act 1950 (SRA).

[58] The Federal Court in *Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd* [2008] 5 CLJ 321; [2008] 4 MLJ 641; [2008] 1 MLRA 705, held that an order of *mandamus* can be granted either:

(i) under s. 44 of the SRA; or

(ii) the additional powers of the High Court provided by para. 1 of the Schedule to the CJA.

[59] Furthermore, O. 53 r. 1(2) of the ROC provides that this order (O. 53) is subject to the provisions of Chapter VIII of Part 2 of the SRA.

[60] Therefore, any application for an order of *mandamus* made by way of judicial review proceedings must comply with the requirement of s. 44 of the SRA.

[61] Section 44 of the SRA reads as follows:

Enforcement Of Public Duties

Power to order public servants and others to do certain specific acts

44(1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:

Provided that:

(a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;

(b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;

(c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;

(d) the applicant has no other specific and adequate legal remedy; and

(e) the remedy given by the order applied for will be complete.

(2) Nothing in this section shall be deemed to authorize a Judge:

(a) to make any order binding on the Yang di-Pertuan Agong;

(b) to make any order on any servant of any Government in Malaysia, as such, merely to enforce the satisfaction of a claim upon that Government; or

(c) to make any order which is otherwise expressly excluded by any law for the time being in force.

[62] In *Koon Hoi Chow v. Pretam Singh* [1972] CLJU 56; [1972] 1 LNS 56; [1972] 1 MLJ 180b; [1972] 1 MLRH 497, Sharma J (as he then was) had outlined four prerequisites essential to the issue of an order under s. 44 of the SRA or of a *mandamus*:

(i) whether the applicant has a clear and specific legal right to the relief sought;

(ii) whether there is a duty imposed by law on the first respondent;

(iii) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the first respondent; and

(iv) whether the applicant has any remedy, other than by way of *mandamus*, for the enforcement of the right which has been denied to him.

[63] Based on the case, in order to issue the order of *mandamus*, the applicant must show not only that she has a legal right to have the act performed but that the right must be so clear, specific and well defined as to be free from any reasonable controversy. The order cannot be issued when the right is doubtful, or is a qualified one or where it depends upon an issue of fact to be determined by the first respondent. The failure to show the existence of any legal right to compel the performance of a legal duty cast upon the first respondent will deny the order of *mandamus*.

[64] In view of the above, it is clear that one of the conditions for an order of *mandamus* to be issued is the existence of a duty imposed by law on the first respondent. The court can command the first respondent to do that of which it was his clear legal duty to do so.

[65] In absence of such legal duty, *mandamus* shall not lie against the first respondent. I find support for my view by referring to the Court of Appeal case of *Peguam Negara Malaysia v. Dr Micheal Jeyakumar Devaraj* [2012] 1 MLRA157; [2011] 9 CLJ 645; [2012] 1 MLJ 179 where it was held as follows:

> [30] In the instant appeal, the disbursement of the allocation is entrusted to the DG and/or the director, who would consider each application in accordance with the guidelines for that purpose. *This involves an exercise of discretion based on a detailed and comprehensive process of evaluation. The DG and/or the director is not required to approve all and sundry applications for the allocation. The respondent must show, inter alia, that there is a legal or statutory duty on the part of the DG and/or the director as a matter of course to approve his 2010 application. The respondent must establish the existence of a duty of a public nature, the performance of which is imperative and not optional or discretionary. The respondent has failed to do so. The notice of motion is clearly premised on the DG's and/or the director's discretion to approve and disburse funds'. There is not an iota of law that the DG and/or the director must do so.* (emphasis added)

[66] Further, in the case of *Karpal Singh Ram Singh v. Ketua Hakim Negara* [2011] 1 MLRH 23; [2011] 4 CLJ 179, the applicant applied, *inter alia*, for an order of *mandamus* to issue against the respondent, directing the respondent to respond to the applicant's request *vide* the applicant's letter dated 1 December 2010, that the respondent recuse himself from determining the merits of a complaint by the applicant against the respondent under s. 13 of the Judges' Code of Ethics 2009. The Attorney General, in objecting to the leave of the judicial review application, relied to, among others, the ground that the respondent does not have a legal duty under s. 13 of the Judges' Code of Ethics 2009 to respond in a manner as dictated by the applicant in its letter. Aziah Ali J (as she then was) held as follows:

> [12] *The Attorney General submits that under s. 44(1)(b) of the SRA, the applicant must show that the respondent has a legal duty under ss.12 and 13 of the Code.* The Attorney General cites the case of *Koon Hoi Chow v. Pretam Singh* (*supra*) wherein Sharma J said:
>
> *Proviso (b) requires that the doing or forbearing must be clearly incumbent on the person in his public character. There must be under the law some duty cast upon the public officer. If he does not do the duty, then the court will call upon him to perform that duty.*
>
> It is submitted that s. 12 of the Code confers power on the Chief Justice to receive any complaint against a judge alleged to have committed a breach of the provision of the Code. Section 13 empowers the Chief Justice to determine the complaint, coupled with the discretion of whether to dismiss the complaint, to refer the judge to a tribunal or to refer the matter to the Committee under s. 14 of the Code. *It is submitted that the words "... Chief Justice is of the opinion that the complaint has no merit, he may dismiss it ..." Clearly indicates that it is an empowering provision coupled with the discretionary powers to act in any manner prescribed in s. 13* (*Gasing Meridian Sdn Bhd v. Datuk Bandar Kuala Lumpur* [2004] 1 CLJ 219). *Therefore, it is submitted that section 13 does not impose a duty on the Chief Justice to act in a manner dictated by the applicant.*
>
> [16] *Mandamus* can be granted only when a legal duty is imposed on an authority. In MP Jain '*Administrative Law of Malaysia and Singapore*' 3rd edn at pp. 652, 653 it is stated:
>
> The order of *mandamus* is a command issued by the High Court asking an authority to perform a public duty imposed upon it by law *... Mandamus can be granted only when (i) a legal duty is imposed on an authority, and it does not perform the same;* and (ii) the applicant has a legal right to compel the performance of the public duty prescribed by law.
>
> *What can be enforced through mandamus is a duty of a public nature, the performance of which is imperative and not optional or discretionary with the concerned authority. Thus, if an officer has power, rather than a duty, and if he does not use his power, mandamus is not issued to compel him to exercise his power.*

> As correctly submitted by counsel holding watching brief for the Bar Council, the Code does not provide for a method or manner in dealing with a situation where a complaint is made against the Chief Justice. Likewise, as submitted by the Attorney General, *ss. 12 and 13 of the Code do not impose a legal duty on the respondent to act in the manner dictated by the applicant. Therefore, in the absence of any legal duty that is imperative and not optional or discretionary in nature imposed upon the respondent under ss. 12 and 13 of the Code, I find that the applicant has failed to satisfy the condition under s. 44(1)(b) of the SRA.* Thus, this is further ground to dismiss the application for being frivolous.
>
> (emphasis added)

[67] In the instant case, it is my view that the first respondent has no jurisdiction to determine the applicant's application to renounce Islam and therefore, there is no legal duty on the part of the first respondent to decide the applicant's application to renounce Islam. As such, there is no omission which can attract the grant of *mandamus*.

[68] Further, I find that there is no single legal provision nor legal precedent specifically provide or hold that the first respondent has the jurisdiction to hear an application to renounce Islam.

[69] All in all, it is my view that the applicant's action in framing the application as a challenge against the alleged omission by the first respondent is a futile attempt to evade the application of art. 121(1A) of the FC.

Conclusion

[70] Bearing in mind that this is an application for leave to commence judicial review proceedings under O. 53 of the ROC, it is trite that the test for leave to commence judicial review be complied with.

[71] Having considered the application, I am of the opinion that the subject matter of this application is not amenable to judicial review.

[72] In addition to that, I also reiterate that the applicant has failed to show an arguable case to obtain the order of *certiorari* and *mandamus* at the substantive stage. The orders sought by the applicant are frivolous in nature.

[73] It is my considered view that the applicant has failed to cross the hurdle of the judicial review test. As discussed above, the subject matter in this case has been settled by law. It is clear that there is no arguable case for the applicant. Therefore, this application for leave is frivolous and is not amenable to judicial review.

[74] Thus, this application for leave to commence the judicial review proceeding (encl. 1) is dismissed with costs of RM3,000 without the allocator fee.